

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**SHANE COSSEY; CATLIN JACKSON; GABRIEL
TARBELL; CASSIDY WARD; FRANK J.
POWLESS; DONALD F. POWLESS, III; LOREN
RIVERA; CHRISTOPHER LAYDEN; and
WILLIAM BURDGE,**

Plaintiffs,

v.

**9:04-CV-1501
(FJS/GHL)**

**JOSEPH DAVID, Superintendent; MR. HEATH,
Deputy of Programs; CAPTAIN JOSEPH
BELARGE; and REVEREND J.W. PRISK,**

Defendants.

APPEARANCES

SHANE COSSEY

04-B-1290

Greene Correctional Facility

P.O. Box 975

Coxsackie, New York 12051-0975

Plaintiff *pro se*

CATLIN JACKSON

Greene Correctional Facility

P.O. Box 975

Coxsackie, New York 12051-0975

Plaintiff *pro se*

GABRIEL TARBELL

03-B-0754

Greene Correctional Facility

P.O. Box 975

Coxsackie, New York 12051-0975

Plaintiff *pro se*

CASSIDY WARD

03-B-1961

Greene Correctional Facility
P.O. Box 975
Coxsackie, New York 12051-0975
Plaintiff *pro se*

FRANK J. POWLESS

03-B-2646

Upstate Correctional Facility
P.O. Box 2000
309 Bare Hill Road
Malone, New York 12953
Plaintiff *pro se*

DONALD F. POWLESS, III

03-B-2975

Greene Correctional Facility
P.O. Box 975
Coxsackie, New York 12051-0975
Plaintiff *pro se*

LOREN RIVERA

Greene Correctional Facility
P.O. Box 975
Coxsackie, New York 12051-0975
Plaintiff *pro se*

CHRISTOPHER LAYDEN

95-A-1209

Greene Correctional Facility
P.O. Box 975
Coxsackie, New York 12051-0975
Plaintiff *pro se*

WILLIAM BURDGE

04-B-1297

Greene Correctional Facility
P.O. Box 975
Coxsackie, New York 12051-0975
Plaintiff *pro se*

SCULLIN, Chief Judge

ORDER

By Order dated February 28, 2005, this Court instructed Plaintiffs, with the exception of Plaintiff Shane Cossey, either to prepay the \$150.00 filing fee required to file this civil rights action or each of them to provide the Clerk of the Court with an application to proceed *in forma pauperis* and an inmate authorization form for \$150.00.¹ See Dkt. No. 4 at 4.

Since Plaintiff Frank J. Powless has timely filed the required documents, this Court may properly consider his application to proceed *in forma pauperis*. See Dkt. Nos. 5-6. After reviewing the entire file in this matter, including Plaintiff Frank J. Powless' *in forma pauperis* application, the Court concludes that Plaintiff Frank J. Powless may proceed with this action *in forma pauperis*.

According to this Court's previous Orders, the deadline for Plaintiffs to each either prepay the \$150.00 filing fee or to submit an *in forma pauperis* application together with an authorization form was March 31, 2005. See Dkt. Nos. 4, 8. Plaintiffs, other than Plaintiff Cossey and Plaintiff Frank J. Powless, have not complied with these instructions. Therefore, the Court dismisses Plaintiffs Jackson, Tarbell, Ward, Donald F. Powless III, Rivera, Layden and Burdge from this action for their failure to comply with this Court's prior Orders.

Accordingly, based upon the foregoing, the Court hereby

ORDERS that Plaintiffs Jackson, Tarbell, Donald F. Powless III, Rivera, Layden and Burdge are **DISMISSED** from this action for failure to comply with this Court's February 28,

¹ Plaintiff Cossey submitted an *in forma pauperis* application and authorization form with the complaint. By Order dated February 28, 2005, the Court granted Plaintiff Cossey's application to proceed *in forma pauperis*. See Dkt. No. 4.

2005 and March 17, 2005 Orders; and the Court further

ORDERS that Plaintiff Frank J. Powless' *in forma pauperis* application is **GRANTED**;² and the Court further

ORDERS that the Clerk of the Court shall provide the Superintendent of the facility that Plaintiff Frank J. Powless has designated as his current location with a copy of Plaintiff Frank J. Powless' authorization form and notify that official that Plaintiff Frank J. Powless has filed this action and is required to pay the entire statutory fee of \$150.00 pursuant to 28 U.S.C. § 1915;³ and the Court further

ORDERS that the Clerk of the Court provide a copy of Plaintiff Frank J. Powless' authorization form to the Financial Deputy of the Clerk's Office; and the Court further

ORDERS that the Clerk of the Court shall issue summonses and forward them, together with copies of the complaint, to the United States Marshal for service upon the named Defendants, as well as a copy of this Order. The Clerk of the Court shall also forward a copy of the summons and complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order; and the Court further

ORDERS that Defendants or their counsel file a formal response to Plaintiffs' complaint

² The Court notes that, although it is granting Plaintiff Frank J. Powless' application to proceed *in forma pauperis*, he will still be required to pay fees that he may incur in the future regarding this action, including copying and/or witness fees.

³ The Court notes that multiple plaintiffs are collectively responsible for payment of the \$150.00 filing fee pursuant to 28 U.S.C. § 1915. However, the statute does not provide that each of the plaintiff's liability should be equal. In accordance with § 1915, funds are withheld from each of the inmate accounts until the filing fee is paid in full. It is possible that some or even a single plaintiff may pay the entire \$150.00 fee if he is the only plaintiff receiving monies that can be encumbered. Ultimately, no more than \$150.00 will be collected for any one action, but individual inmates may contribute varying amounts of money.

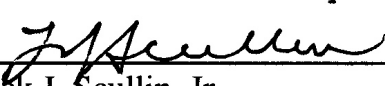
as provided for in Rule 12 of the Federal Rules of Civil Procedure subsequent to service of process on Defendants; and the Court further

ORDERS that the parties or their counsel shall file all pleadings, motions and other documents relating to this action with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 South Clinton Street, Syracuse, New York 13261-7367. **Any paper that a party sends to the Court or to the Clerk of the Court shall be accompanied by a certificate setting forth the date on which the party mailed a true and correct copy of the same to all opposing parties or their counsel. The Court or the Clerk of the Court shall return, without processing, any letter or other document that it receives which does not include a proper certificate of service.** Plaintiffs shall also comply with any Clerk's Office requests for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York regarding motions, and the parties are to make any such motions returnable before the assigned Magistrate Judge on any business day with proper allowance for notice as the Rules require. The Court will decide all motions on submitted papers, without oral argument, unless the Court otherwise orders. **Plaintiffs are also required to promptly notify the Clerk's Office of any change in their addresses; their failure to do so will result in the dismissal of this action;** and the Court further

ORDERS that the Clerk of the Court serve a copy of this Order on Plaintiffs by regular mail.

IT IS SO ORDERED.

Dated: May 12, 2005
Syracuse, New York



Frederick J. Scullin, Jr.
Chief United States District Court Judge